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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,224	12/23/2002	Robert John Watson		9626

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/070,224

Applicant(s)
Watson et al

Examiner
Alton Pryor

Art Unit
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 23, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19, 22, 25, 26, and 29-32 is/are rejected.
- 7) ☒ Claim(s) 20, 21, 23, 24, 27, and 28 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

Claim Objection under 37 C FR 1.75(c)

Claims 18,19,29-32 are objected to under 37 CAR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 18,19 describe how ingredients are obtained. A statement in a composition as to how ingredients are obtained does not further limit the composition. Claims 29-32 states that the mixture “is made for use in spray form”. A statement in a mixture (composition) claim as to how a composition is to be used does not further limit the composition claim. To correct this Examiner suggests that Applicant delete “made for use in spray form” and insert --- is in spray form ---,

Duplicate Claim Warning

Applicant is advised that should claim 17 be found allowable, claims 18 and 19 will be objected to under 37 CAR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Also note that this warning is applicable to claims 29-31 where claim 29 is a duplicate of claim 28; claim 30 is a duplicate of claim 22; and claim 31 is a duplicate of claim 17.

Claim Rejections under 35 U.S.C. 112, 2nd paragraph

1.The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit:

2. Claims 18,19,29-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 is unclear as to what is made. The claims simply state "wherein is made". What is made?

Claims 29-32 are rejected. It is not clear as to whether Applicant intends to have composition existing in spray form or used in spray form.

Claim Rejections under 35 U.S.C. 102(b)

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17-19,22,25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rakieta et al (J. Am. Dietet. Assoc., 1951, vol. 27, pp. 864-8). Rakieta teaches the composition of orange juice to comprise citric acid and caprylic acid. Citric acid is a citrus agent which is present in citrus fruits such oranges and lemons. Rakieta teaches that orange juice also contains sodium and zinc. Sodium and zinc are micro nutrients. See abstract. Applicant claims that the composition is synergistic. However, Applicant provides no data to support that instant composition is indeed synergistic.

Art Unit:

Rakieten composition comprises a citrus agent and caprylic acid as disclosed by the instant invention and would inherently meet the limitations as claimed.

Claims 17-19,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson et al (AU-A-59941/90; 01/31/91). Jackson teaches an ensiling composition comprising 2-8 % octanoic acid (caprylic acid) and 12.3 % aqueous ammonia. See page 1 line 24 - page 2 line 3, page 2 lines 17-21. Ammonia is the nitrogen containing micronutrient. Jackson also teaches a carrier for the composition. The carrier for the composition is citrus pulp (citrus agent). See page 2 lines 22-28. Jackson teaches that the octanoic composition is synergistic. See page 3 lines 4-10.

Claim Rejection under 35 U.S.C. 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson as applied to claims 1,18,19,22 above. Jackson teaches all that is recited in claims 1,18,19,22 except for the instant amount of said citrus agent and caprylic acid combination to micronutrient. However, one having ordinary skill in the art at the time the invention was made would have been expected to determine the optimum amounts of ingredients through routine experimentation. One would have been motivated to do this in order to make the most effective ensiling composition.

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Claim Objection


Claims 20,21,23,24,27,28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the composition comprising 10-30% alcohol or NPK micro-nutrient combination.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


Alton Pryor
ALTON N. PRYOR
PRIMARY EXAMINER

Primary Examiner, AU 1616

5/30/03